

STATE OF MICHIGAN
COURT OF APPEALS

AMERISURE INSURANCE COMPANY,

Plaintiff/Counterdefendant-
Appellee,

v

RAE LOUISE PLUMB,

Defendant/Cross-
Defendant/Counterplaintiff/Cross-
Plaintiff-Appellant,

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant/Cross-Plaintiff-Cross-
Defendant-Appellee.

FOR PUBLICATION
February 10, 2009

No. 276384
Tuscola Circuit Court
LC No. 05-023320-NF

Advance Sheets Version

Before: Whitbeck, P.J., and O’Connell and K. F. Kelly, JJ.

O’CONNELL, J. (*concurring in part and dissenting in part*).

I concur with the majority’s holdings that no genuine issue of material fact exists regarding whether defendant Rae Louise Plumb unlawfully took the Jeep, that MCL 500.3113(a) applies to the facts of this case, and that there exists a genuine issue of material fact regarding whether Plumb reasonably believed that she was entitled to take the Jeep. I disagree with the majority’s conclusion that MCL 500.3113(a) requires that use of a motor vehicle must be “legal” in order for an individual to be eligible for personal protection insurance (PIP) benefits. I am unable to find such a requirement in the statute. Consequently, I reluctantly conclude that there exists a genuine issue of material fact regarding whether Plumb reasonably believed that she was entitled to take and use the Jeep.

MCL 500.3113 precludes eligibility for PIP benefits under certain circumstances. The statute provides, in pertinent part:

A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:

(a) The person was using a motor vehicle or motorcycle which he or she had *taken unlawfully*, unless the person *reasonably believed that he or she was entitled to take **and** use the vehicle*. [emphasis added.]

The majority concludes that MCL 500.3113(a) precludes eligibility for PIP benefits when a motor vehicle is taken unlawfully and the claimant has failed to show (1) that the claimant reasonably believed that he or she was entitled to “take” the vehicle and (2) that the claimant reasonably believed that he or she was entitled to “use” the vehicle. Although I concur with the majority’s analysis of MCL 500.3113(a), I disagree with the majority’s statement that “[f]or the purposes of MCL 500.3113(a), we hold that, as a matter of law, one cannot reasonably believe that he or she is entitled to use a vehicle when the person knows that he or she is unable to legally operate the vehicle.” *Ante* at 8. In my opinion, the majority opinion adds a requirement to the statute that does not exist. MCL 500.3113(a) requires that the person using a vehicle must “reasonably believe[] that he or she was entitled to take and use the vehicle.” The majority engrafts onto the statute the concept that one must “legally operate the vehicle” in order to have the reasonable belief that he or she was entitled to use the vehicle. I find no such requirement in the statute.

I conclude that there is a question of fact whether Plumb reasonably believed that she was entitled to take and use the vehicle.¹ It is not for the trial court to make factual findings or weigh credibility when deciding a motion for summary disposition. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 176; 579 NW2d 906 (1998) (Weaver, J.). Rather, the trial court must draw all reasonable inferences in favor of Plumb, the nonmovant. *Houdek v Centerville Twp*, 276 Mich App 568, 572-573; 741 NW2d 587 (2007). The trial court erred when it weighed Plumb’s credibility and made impermissible factual findings.²

I would reverse and remand for further proceedings consistent with this opinion.

/s/ Peter D. O’Connell

¹ That Plumb may have stolen the vehicle, that she was an unlicensed driver, and that she may have been intoxicated are all factors that a jury may consider when determining whether Plumb had a reasonable belief that she was entitled to take and use the vehicle.

² Although I note that it is not the role of this Court to add or subtract words from the statute, the ordinary reader of MCL 500.3113 may wonder how one can unlawfully take a motor vehicle and still have a reasonable belief that he or she is entitled to use the vehicle. As a reader of this statute, I share this concern. However, this Court’s job is merely to interpret the statute as it is written. The Legislature may wish to revise the statute to provide for a “reasonable belief” that one is entitled “to take the vehicle and legally use the vehicle.”